Jet Line Products, Inc. *and* International Brotherhood of Electrical Workers, Local Union 379, AFL–CIO. Case 11–CA–6049

April 28, 1977

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS PENELLO AND MURPHY

On January 27, 1976, Administrative Law Judge Jennie M. Sarrica issued the attached Decision in this proceeding dismissing the complaint in its entirety. Thereafter, the General Counsel filed exceptions and a supporting brief, and the Charging Party Union filed exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge only to the extent consistent herewith.

Jet Line Products, Inc., hereinafter referred to as the Respondent, is engaged in the manufacture of electrical products. On February 1, 1973, the Respondent entered into a 2-year collective-bargaining agreement with the International Brotherhood of Electrical Workers, Local Union 379, AFL–CIO, hereinafter referred to as the Union. Article I, section 1, of the agreement provided that it would remain in effect until January 31, 1975, and from year to year thereafter, "unless notice of desire to change or terminate is given by either party to the other at least sixty (60) days prior to the expiration date. Such notice shall specify the nature of the changes proposed or the fact that a termination is proposed." Under this provision, notice to terminate or change the February 1, 1973, agreement was due by December 2, 1974.

The Administrative Law Judge found that Eugene Ruff, the Union's business manager, telephoned Robert MacFetrich, the general manager of Respondent's Matthews plant, on or about November 25, 1974, to advise him that the Union was in the process of formulating bargaining demands and to ascertain if late tendering of a formal list of proposed changes would present any problems. Ruff also stated that if he was not granted the requested grace period he would timely deliver a list of proposed modifications which would specify every contract section he thought employees might want changed. The Administrative Law Judge further found that MacFetrich assured Ruff that this would not be necessary, but did mention that the contract probably would have to be extended by the number of days that the Union submitted the proposal late.

The Administrative Law Judge found that the next communication between the parties occurred around January 10, 1975, when Ruff telephoned MacFetrich and mentioned that he was late in forwarding the proposals, but stated that MacFetrich would see them shortly. MacFetrich replied, "O.K." In a letter to MacFetrich dated January 14, 1975, Ruff requested a meeting for the purpose of negotiating a contract, and attached the proposed contract changes. The parties met on February 3, 1975, at which time the Respondent refused to bargain because it considered the Union's proposals as untimely submitted.

On the basis of these facts, the Administrative Law Judge concluded that automatic renewal of the contract had not been forestalled and that therefore the Respondent had not violated the Act by its refusal to negotiate with the Union. Specifically, she interpreted article I, section 1, of the agreement as incorporating two separate requirements with simultaneous deadlines: (1) "notice of desire to change" the terms of the contract must be given to the other party, and (2) "the nature of the changes proposed" must be specified. Although the Administrative Law Judge found that in the November 1974 telephone conversation the Respondent agreed to "accept the Union's specific proposals at a date later than that required" by the contract, she nevertheless concluded that the necessary "notice of desire to change" the terms of the contract was not timely given. Citing the absence of a specific "contention that oral notification forestalling contract renewal was given and accepted in the November conversation," the Administrative Law Judge found that the parties had not agreed to waive the written notice requirement of Section 8(d)(1) for modifying or terminating a collective-bargaining agreement. Since the Union failed to give timely written notice of a desire to change the contract, she found that the contract automatically renewed itself pursuant to its terms, and recommended dismissal of the complaint. We disagree.

First, the Administrative Law Judge's reliance on the requirements of Section 8(d) is misplaced. Section 8(d) was designed to eliminate the "quickie strike" by providing a particular 60-day period during which unions may not strike and employers may not lockout in support of bargaining demands.[1] "As there was no strike in this case, Section 8(d) is

[1] *Mastro Plastics Corp. and French-American Reeds Mfg. Co., Inc.* v. *N.L.R.B.*, 350 U.S. 270, 287–288 (1956).

inapplicable." *United States Gypsum Company*, 90 NLRB 964, 968, fn. 11 (1950).[2]

Second, contrary to the Administrative Law Judge, we find that the requirement of article I, section 1, of "notice of desire to change" the terms of the contract can be fulfilled by either written or oral notice. Examination of other portions of the contract reveals that where the parties intended notification to be in written form they explicitly so stated. In contrast, the provision in question here refers only to "notice" and does not specify that it be given in writing. Accordingly, we conclude that an oral communication of an intention to modify the terms of the contract is sufficient to satisfy the notice requirement of article I, section 1.

Finally, we are persuaded that Respondent received such oral notice in the November telephone conversation with Ruff. In view of the Administrative Law Judge's finding that at that time Respondent agreed to "accept the Union's specific proposals at a date later than that required" by the contract, it must follow that that same conversation, which occurred before the December 2 contract deadline, constituted oral "notice of desire to change" the terms of the contract. For, Respondent could hardly have agreed to extend the date for submitting specific proposals for new contractual terms without having been given notice that the Union did, in fact, desire to change the contract. Similarly, that Respondent, in its conversation with Ruff, commented on the possibility of extending the contract by the number of days that the Union was late in submitting its proposals clearly indicates that Respondent was placed on notice in November of the Union's intention to modify the agreement. Accordingly, since the Union gave timely oral notice of a desire to change the terms of the contract and since the Respondent agreed to accept the Union's specific proposals at a date later than the contract deadline, we find that automatic renewal of the agreement was forestalled, and Respondent's subsequent refusal to negotiate when the Union submitted its proposed changes was violative of Section 8(a)(5) and (1).

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union concerning various changes to the collective-bargaining agreement it had with the Union.
4. The aforesaid unfair labor practice is an unfair labor practice affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit concerning the Union's proposed changes in the collective-bargaining agreement and, if an understanding is reached, embody such understanding in a signed agreement.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Jet Line Products, Inc., Matthews, North Carolina, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning the proposed changes in the collective-bargaining agreement it has with International Brotherhood of Electrical Workers, Local Union 379, AFL–CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All production and maintenance employees engaged in the manufacturing, processing and fabrication of the products of the Employer at its plant at Matthews, North Carolina; excluding foremen, model shop and general office employees, guards and watchmen, and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit concerning the Union's proposed changes in its

[2] *United States Gypsum Company* was cited with approval in *Proctor & Gamble Independent Union* v. *Proctor & Gamble Mfg. Company*, 312 F.2d 181, 189 (C.A. 2, 1962), cert. denied 374 U.S. 830. See *Anchorage Laundry & Dry Cleaning Association, Inc.*, 216 NLRB 114 (1975); *General Maintenance Service Company, Inc.*, 182 NLRB 819, 822, fn. 9 (1970), enfd. 77 LRRM 2607, 65 LC ¶ 11816 (C.A. 4, 1971); *Chain Service Restaurant, Luncheonette and Soda Fountain Employees, Local 11, AFL-CIO, et al.*, 132 NLRB 960, 973, fn. 8 (1961), enfd. in pertinent part 302 F.2d 167 (C.A. 2, 1962); *International Harvester Company*, 77 NLRB 242, 243 (1948).

collective-bargaining agreement and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its plant in Matthews, North Carolina, copies of the attached notice marked "Appendix."[3] Copies of said notice, on forms provided by the Regional Director for Region 11, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 11, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

[3] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning the proposed changes in the collective-bargaining agreement we have with International Brotherhood of Electrical Workers, Local Union 379, AFL–CIO, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below concerning the Union's proposed changes in its collective-bargaining agreement and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

> All production and maintenance employees engaged in the manufacturing, processing and fabrication of the products of the Employer at its plant at Matthews, North Carolina; excluding foremen, model shop and general office employees, guards and watchmen, and supervisors as defined in the Act.

JET LINE PRODUCTS, INC.

DECISION

STATEMENT OF THE CASE

JENNIE M. SARRICA, Administrative Law Juge: This is a proceeding under Section 10(b) of the National Labor Relations Act, as amended (29 U.S.C. 151, *et seq.*), hereinafter referred to as the Act. Based on charges filed on March 20, 1975,[1] a complaint was issued on May 21, presenting allegations that Jet Line Products, Inc., hereinafter referred to as Respondent, committed unfair labor practices within the meaning of Sections 8(a)(1) and (5) and 2(6) and (7) of the Act. Respondent filed an answer denying that it committed the violations of the Act as alleged. Upon due notice, the case was heard before me at Charlotte, North Carolina, on August 19. Representatives of all parties entered appearances and had an opportunity to participate in the proceeding.

Based on the entire record, including my observation of the witnesses, and after due consideration of briefs and arguments, I make the following:

FINDINGS AND CONCLUSIONS

I. JURISDICTION

Respondent, a wholly owned subsidiary of Thomas Industries, Inc., is a North Carolina corporation with facilities located at Matthews, North Carolina, where it is engaged in the manufacture of electrical products. During the year preceding issuance of the complaint, a representative period, Respondent, in the course and conduct of its business operations, sold and distributed products valued in excess of $50,000 which it shipped directly to points located outside the State of North Carolina.

Respondent admits and I find that it is now, and has been at all times material herein, an employer within the meaning of Section 2(2) of the Act, engaged in commerce and in operations affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION

The Charging Party, International Brotherhood of Electrical Workers, Local Union 379, AFL–CIO, hereinafter referred to as the Union, is now and has been during all times material herein a labor organization within the meaning of Section 2(5) of the Act.

[1] All dates are in 1975 unless otherwise specified.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Issue*

Whether Respondent's refusal to negotiate a new contract was a violation of Section 8(a)(5) and (1) of the Act: (a) whether the Union gave Respondent effective timely notice of its desire to reopen their automatically renewable collective-bargaining agreement for renegotiation; (b) if not, whether Respondent waived any defect in either the timeliness or the form of the reopening notice.

B. *Background*

There is a history of bargaining for several successive contracts, the most recent of which was for the period from February 1, 1973, to January 31, 1975, covering employees in the agreed-upon unit which I find is appropriate.[2]

Sections of the agreement pertinent to a resolution of the issues herein are:

Article I

Section 1.

> This Agreement shall take effect February 1, 1973, and shall remain in effect until January 31, 1975, and shall continue in effect thereafter from year to year, unless notice of desire to change or terminate is given by either party to the other at least sixty (60) days prior to the expiration date. Such notice shall specify the nature of the changes proposed or the fact that a termination is proposed.

Section 2.

> This Agreement shall be subject to amendment at any time by mutual consent of the parties, but any such amendment shall be reduced to writing, shall include a statement of its effective date, and shall be signed by duly authorized representatives of the Company and the Union.

C. *The Facts Surrounding the Alleged Violations*

Under their contract the last day on which receipt of a notice of termination would be timely was December 2, 1974. Union Business Manager Eugene Ruff testified that during Thanksgiving week, on November 25, 26, or 27, 1974, he telephoned Robert MacFetrich, general manager of Respondent's Matthews plant, about the contract. He advised MacFetrich that the Union had not been able to draft a set of proposed changes for the contract. Ruff asked MacFetrich if the Company would accept the Union's proposed contract changes if they were submitted later. MacFetrich replied "I don't guess I have any choice . . . ." Ruff responded, "But you do have a choice . . . . If there is going to be any problem over this, I can just sit down and draw up a set of proposed changes that would in effect open every area of the agreement that I feel like the employees might wish to have changes in, and I can hand-deliver them to you and have them there [some 20 miles distant] on time." MacFetrich assured Ruff this would not be necessary; he added, however, that probably the contract would have to be extended "by those number of days that [the] proposal were submitted late." Ruff thanked MacFetrich and ended the conversation.

MacFetrich denied he had any conversation with Ruff during Thanksgiving week, or indeed at any time during the period October through December 2, 1974. According to MacFetrich he received a telephone call from Ruff "after the first of the year," but probably 3 or 4 days before he received the letter dated January 14, 1975, and that in this call Ruff mentioned he was late in forwarding his proposed contract changes. He could not recall that Ruff had requested an extension of time but merely stated that MacFetrich would see the proposed changes shortly and he replied "O.K." Ruff could not recall this alleged conversation which has been generally referred to as the January 10 conversation.

By the letter to MacFetrich, dated January 14, Ruff requested a meeting at the earliest possible date for the purpose of negotiating a contract, and attached the proposed contract changes. By letter dated January 16, MacFetrich acknowledged Ruff's letter and indicated that he would contact Ruff in the near future concerning a meeting date "for the purpose of negotiating the contract." On January 21, the Union sent the Form F–7 notice to the Federal Mediation and Conciliation Service. Thereafter, in late January, MacFetrich called Ruff and a meeting date was set for February 3. According to Ruff, he inquired whether he should bring the entire employee negotiating committee and MacFetrich replied that this meeting would be "just to more or less lay the ground-work," and would include only Ruff, MacFetrich, and Gilbert Grady, director of employee relations for Thomas Industries. According to MacFetrich, he stated the Company had a proposed plan it would like to outline for Ruff. At the February 3 meeting Grady informed Ruff that the Company regarded the Union's proposed changes as untimely submitted, and that the Company was not required to negotiate.[3] The parties did not thereafter recede from their respective positions.[4]

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[2] The complaint alleges and Respondent admits that the following unit, which is substantially identical to the contract unit, is appropriate for purposes of collective bargaining within the meaning of Sec. 9(b) of the Act:

> All production and maintenance employees, engaged in the manufacturing, processing, and fabrication of the products of the employer at its plant at Matthews, North Carolina, excluding foremen, model shop and general office employees, guards and watchmen, and supervisors as defined in the Act.

[3] Ruff testified that he asserted he had an oral extension from MacFetrich, and Grady insisted that MacFetrich had no authority to give such an extension. Grady testified that Ruff asserted he had called MacFetrich before he submitted the proposals and told MacFetrich he was late and MacFetrich had said he would accept them. Grady told Ruff that MacFetrich had no authority to accept late notification. According to Grady, reference was to a telephone call by Ruff to MacFetrich 3 or 4 days before January 14, rather than any alleged pre-Thanksgiving conversation.

[4] The Company offered a 2-year contract with a wage-bonus plan on a take-it-or-leave-it basis as a so-called face-saving device for Ruff for having failed to give timely notice of termination, which Ruff rejected, and the Company refused to meet for contract discussions on any other basis. After the charge was filed the Company offered to negotiate on its proposals only

(Continued)

D. *Analysis*

The credibility issue here with respect to the asserted late November 1974 telephone conversation between Ruff and MacFetrich is a difficult one, for my observation of the two men in this respect, while on the witness stand as well as in the hearing room and during the testimony of the other, would not alone break the balance of their diametrically opposite testimony on specific details. Both impressed me as men of integrity. They had dealt with each other amicably for over 5 years. The evidence reveals they had established between them a spirit of cooperation and mutual respect. Each revealed an immediate grasp of the impact of crucial questions. Nor are they men of insensitivity for such points of conflict in testimony the demeanor displayed respectively was an emotional reaction apparent in countenance and mannerism suggestive of embarrassment. Yet neither gave any indication which would lead this observer to conclude that he was not being truthful to the best of his recollection of events. The resolution of the issue of fact presented by their testimony is, therefore, based primarily on the following considerations.

I am convinced that the pre-Thanksgiving 1974 conversation between Ruff and MacFetrich did take place and that Ruff has carefully and accurately presented the content of that conversation. I am impressed by the fact that Ruff, although clearly sophisticated in matters involving labor relations, made no attempt to interpolate what was stated or to put in MacFetrich's mouth clear and specific statements that would benefit his own case. Also, it is noted that MacFetrich stated on the witness stand that his uncertainty in various respects stemmed from the fact that at the time, and at least through the date of his January 16 letter, he did not have a clear comprehension of the situation, meaning, as I take it, the impact on their respective legal rights and obligations.

The fact that Ruff could not recall the asserted conversation with MacFetrich around January 10, and MacFetrich did, is not regarded as detracting from the conclusion that the November 1974 conversation did take place. All Ruff did in that conversation, in effect, was to tell MacFetrich he was late and that MacFetrich would see the Union's proposals in a few days. And, indeed, he was late, in the sense that the situation would appear to have warranted more diligence in presenting the belated proposals. These two men had many conversations on matters not related to bargaining, including a then current effort by Ruff to make available, for the benefit of Respondent's business, prospective customers with whom Ruff had contacts by reason of his position in the Union. The evidence establishes that minor messages involving their own labor relations were, on this and at least one other occasion, insinuated into conversations on such other matters. In these circumstances, Ruff's comments on January 10 would appear to be more in the nature of a reminder to MacFetrich of their conversation with respect to presenting anticipated union proposals later and of his imminent followthrough on it. This being something for which no notice was required, Ruff might well place so little significance on his comment that he would retain no recall of it. Of course, by this time, MacFetrich had had several conversations with Grady[5] and was beginning to attain some "grasp" of the situation, thus becoming more likely to remember Ruff's comment. In my view the January 10 conversation is further confirmation that the pre-Thanksgiving conversation did take place. I also view the mailing by Ruff of the required notice to Federal mediation on January 21 as consistent with MacFetrich's statement that the contract would probably have to be extended for as many days as the proposals were late.

Finally, if there had been no pre-Thanksgiving 1974 conversation, and if Grady had no knowledge thereof, it would seem that, with his labor relations sophistication, Grady would have immediately taken the clearcut stand on December 2, 1974, and thereafter, that the contract had renewed under its terms. Instead, he engaged in various inquiries of MacFetrich concerning the situation during December 1974, then waited until an evaluation of the Union's proposals could be made before taking the position that the Union had failed to take timely action under the contract, admittedly basing this decision on an evaluation of the cost of the Union's proposals. Thus, in all the circumstances, I conclude that Ruff's recall of the pre-Thanksgiving conversation is accurate.

It is Respondent's position that there was no appropriate notice given to forestall automatic renewal of their collective-bargaining agreement and that the 8(d) limitations[6] on the duty to bargain during the contract's renewed term were applicable, so that Respondent was not required to bargain with the Union on its untimely contract proposals. In support of this position, Respondent asserts that although the contract does not specify that notice be given in writing, such formality is imposed by the statute, in the language of Section 8(d); in particular the proviso thereto and subsection (1) which states in pertinent part:

> (d) . . . *Provided,* That where there is in effect a collective-bargaining contract covering employees . . . the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such

if the Union would withdraw the charges herein. Ruff took the position he would rather live with the renewed contract for a year than accept Respondent's conditions for bargaining on its proposals.

[5] I do not view the conversation related by them, between MacFetrich and Grady during December 1974, and their exchange of speculation as to why they had not yet received a communication from the Union, as in any way negating the occurrence of the pre-Thanksgiving telephone conversation between Ruff and MacFetrich. Indeed, it is as logical to view it as confirmation of such a telephone conversation. Thus, Ruff having indicated that the reason his written contract proposals were not then available was because he had not been able to have a sufficient number of employees of Respondent at a union meeting to ascertain their desires and formulate these into demands, and with the weeks passing without a followthrough by Ruff with such written demands, it would seem unusual if such circumstances did not give rise to some wonderment and speculative discussion on the part of Respondent's officials. On the other hand, without the context of his comment by Ruff in a conversation predating the alleged automatic renewal of their contract on December 2, there would appear to be no occasion for MacFetrich and Grady, as they have testified, to engage in their speculation as to whether the employees might be dissatisfied with their representative or to relate this to the lack of a communication from the Union during the month of December.

[6] Sec. 8(d) of the Act provides that the duty to bargain "so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract."

> contract, unless the party desiring such termination or modification —
>
> (1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof . . . .

Respondent contends that there has been no clear and unequivocal waiver of its statutory right to a timely written notice, and that any departure from contract provisions by mutual consent was required by the contract to be reduced to writing and executed.

The General Counsel has taken the position that Section 8(d)(1) of the Act and article 1, section 2, of the contract are not relevant here, the former because the Union did not fail to file the appropriate notices comporting with their agreed-upon extension, and the latter on the ground that the contract section referred to applied only to contract amendments rather than contract termination or extension.

It is well established that when a collective-bargaining agreement has been renewed by operation of its automatic renewal provision, the 8(d) limitations on the duty to bargain during a contract term are applicable.[7] Negotiations for changes in existing contract provisions after a contract has renewed its term are deemed purely voluntary.[8] Thus, in the *Mason Builders* case[9] relied on by Respondent, the company's own petition for a Board election did not excuse the union's failure to give the proper notice under their contract renewal provision or create a duty, under the union's resulting certified status, to bargain for a new contract to replace their automatically renewed agreement.

Clearly Section 8(d) contemplates a written notification for contract termination or modification. However, the Board has stated: [10]

> Section 8(d) exists for the benefit of the contracting parties; there is nothing to prevent them from mutually agreeing to reopen the contract in whole or in part to permit the start of negotiations for a new contract prior to permissible contract date. If they do agree to an early reopening, they are subject to the same standards of good-faith bargaining as if the contract expressly provided for such opening. . . . Having voluntarily agreed to early modification of the contract for these purposes, Respondent was obligated to conform with the good-faith bargaining requirements of Section 8(d).

It would seem that if the parties may agree to depart from the time factor of Section 8(d) they may also agree to a change in the method of giving notice and if they may agree to an early contract opening they may also agree to a late opening.

While the contract herein fails to specify that notice, whether for changes or termination, be given to the other party *in writing* it does require that the notice also "*specify the nature* of the changes proposed or the fact that termination is proposed." This could be interpreted as indicating that a written document was contemplated. Such an interpretation would comport with the past practice of the parties and with the late November conversation between Ruff and MacFetrich. Moreover, there is really no contention here that an oral notice which effectively forestalled renewal was given under the contract. I conclude therefrom that the contract notice requirement was not inconsistent with the written notification for modification or termination contemplated by Section 8(d), and was not an agreement to depart from the statutory requirement.

Because the parties may, as indicated in the foregoing opinions,[11] depart from both the statutory and contract requirements and thereby subject themselves to the same bargaining obligations as would obtain had they followed those procedures, the precise nature of whatever understanding was reached by Ruff and MacFetrich in the pre-Thanksgiving conversation becomes crucial to an evaluation of their respective rights and duties in the bargaining arena.[12]

There is no contention that oral notification forestalling contract renewal was given and accepted in the November conversation. Two possible conclusions as to the nature of that understanding are suggested. One is that Respondent agreed in advance to accept a late contract modification notice. The other is that there was an agreement to extend the contract for a period of 60 days beyond an indefinite date in the future on which the Union would have presented its specific contract modification proposals. I find neither to be the case.

Accepting Ruff's version, and looking to precisely what was said, it becomes clear that Ruff asked MacFetrich whether the Company would accept the Union's proposed contract changes if they were submitted later. It is also clear that he was referring to the contract requirement that the nature of the contract changes desired be specified, for he made his request in the context of detailing the reasons why he had not yet been able to and could not immediately draw up the Union's demands. Since he was asking for a departure from a specific contract provision, the understanding reached must be evaluated in terms of the requirements of that provision.

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[7] See, e.g., *C & S Industries, Inc.*, 158 NLRB 454 (1966); *PPG Industries, Inc.*, 172 NLRB 450 (1968).

[8] See, e.g., *Mallinckrodt Chemical Works*, 114 NLRB 187 (1955); *Michigan Gear & Engineering Company*, 114 NLRB 208 (1955).

[9] *Mason City Builders Supply Co.*, 193 NLRB 177 (1971).

[10] *General Electric Company*, 173 NLRB 253, 256–257 (1968) modified in this respect by *General Electric Company* v. *N.L.R.B.*, 412 F.2d 512 (C.A. 2, 1969), to the extent that conditions may lawfully be imposed on bargaining outside the 8(d) period. See *Ship Shape Maintenance Co., Inc.*, 187 NLRB 289, 291 (1970), where commencement of negotiations 75 days before the expiration date was found to be a waiver for the contractual requirement for a 60-day written notice. Also see the following language in *B. C. Studios, Inc.*, 217 NLRB 307, 312 (1975).

> Settled law establishes that whatever the termination date of a new agreement or whatever the notice requirements, parties may mutually agree at any time to reopen a contract permit the start of negotiations for a new agreement. And once such action is taken, the parties "are subject to the same standards of good faith bargaining as if the contract expressly provided for such opening." *General Electric Company*, 173 NLRB 253, 256 (1968), affd. with modification 412 F.2d 512 (C.A. 2, 1969).

[11] See fn. 10, *supra*.

[12] "Termination" and "modification" are words with somewhat different meanings in a bargaining context from that which they hold in other commercial contexts. *South Texas Chapter, Associated General Contractors*, 190 NLRB 383, 385 (1971). Accordingly, many of the other cases cited in Respondent's brief are not necessarily dispositive of the issues herein.

Although the same contract section covered the requirements for both "notice of a desire to change or terminate" and specification of "the nature of the changes proposed," with simultaneous deadlines, I view these as clearly separable actions. It is significant that no reference was made by Ruff to an extension of time in which to give notice of the Union's desire to change their contract and MacFetrich's reply must be viewed as responding only to the request advanced. In that conversation, Ruff gave no indication that he would not be giving the timely notice under the contract to forestall its automatic renewal. Nor did he give a reason which might prevent his doing so. Indeed, there was still time left for him to dispatch such a notice. Instead, he reported only his difficulty in obtaining employee sentiment in order to draw up the specific contract demands, which were also required at that time by the contract, and emphasized that absent MacFetrich's granting of the requested period of grace he could comply with this requirement by specifying that changes were desired in every contract section he thought employees might want changed. I conclude that MacFetrich agreed only that the Company would accept the Union's specific proposals at a date later than that required, rather than have to unnecessarily review many other contract provisions either before or when they reached the bargaining table; but did not thereby agree that the Company would accept a late notice of a desire for contract modification as forestalling renewal of their contract in accordance with its terms.

Nor can I view MacFetrich's comment that the current contract would probably have to be extended for a period of 60 days beyond the date on which the specific proposed changes were received as an agreement to extend the contract term and notice period to an indefinite date. His was merely an observation of the possible effect of receiving late contract proposals upon the ability of the parties to complete their negotiations in the normal 60-day timespan at the end of the contract term. Any other interpretation would be in the nature of an amendment to the contract duration clause which, under article 1, section 2, of the contract, could be accomplished only if such amendment were duly written and executed by the parties.

Further, I do not find in Respondent's letter of acknowledgement, the telephone exchanges, the exploratory meetings, or Respondent's contract proposals, all subsequent to receipt of the Union's written proposals,[13] any indication that Respondent, by such exchanges, waived its legal position that the contract had renewed for lack of a timely notice.[14] Clearly, by mutual agreement, the parties may at any time amend their collective-bargaining contract without regard to specific times identified for such action by their agreement. If this bargaining freedom is to have meaning the parties must be privileged to explore such a possibility without sacrificing their respective legal rights under the Act.

Nor do I find merit in the General Counsel's contention that by MacFetrich's representations on which the Union relied, Respondent misled the Union into believing that a late notice would be or had been accepted and that Respondent is therefore equitably estopped from raising the untimeliness of the notice as a defense to to the refusal-to-bargain charge.[15] The pre-Thanksgiving conversation, relating as it did to specific contract requirements, must be evaluated strictly on the basis of wherein there was a meeting of the minds constituting an agreement to depart from those requirements rather than what may have been in the mind of one participant but not specifically conveyed to or negated by the other.

On the facts I have found that no agreement to extend the notice period was reached or even discussed; it could be implied only by the fortuitous circumstances that the notice requirement was established by the same contract provision that prescribed submission of specific contract proposals. Since the detailed proposals were singled out as the subject of discussion, there is no warrant for concluding that the parties were discussing any other specific requirement of that section of the contract. Further, what Ruff may have been led to believe during the postrenewal period is irrelevant to his previous failure to give notice before the renewal date of the contract. In failing to so act he could not have relied on such later conduct to his detriment. At most, such postrenewal actions of Respondent may be considered to the extent that they might shed light on the meaning of any ambiguous statements made by MacFetrich to Ruff in the pre-Thanksgiving conversation. I have not found it necessary to so consider them.

As I have found, in agreement with Respondent, that the Union failed to give a timely notice and that the contract automatically renewed pursuant to its terms for a succeeding 1-year period, I shall recommend that the charge herein be dismissed in its entirety.

CONCLUSIONS OF LAW

1. The contract between the Company and the Union automatically renewed for 1 year when the Union failed to give a timely notice for modification.

2. The Company has not committed the unfair labor practices alleged in the complaint.

[Recommended Order for dismissal omitted from publication.]

[13] Because those communications are regarded as exploratory in nature, the record evidence relating thereto is not set forth in detail herein.

[14] See *Champaign County Contractors Association*, 210 NLRB 467, 470 (1974). There it was held that where the contract itself required written notice, such notice to preclude automatic renewal of the contract was not waived by talks which were clearly preliminary in nature.

[15] *Morrison Railway Supply Corporation*, 191 NLRB 487, 490 (1971), is distinguishable on its facts from the situation herein. There the employer led employees to believe that their concerted demand for the day off was granted, then discharged them for leaving, asserting that their departure did not qualify as concerted activity because they did not consciously go on strike.